IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3418 of 2001

For Approval and Signature:
HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ARJANDAS B ADVANI & 25 - Petitioner(s)
Versus
STATE OF GUJARAT & 14 - Respondent(s)

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Appearance :
MR CHETAN K PANDYA for Petitioner(s) : 1 - 26.
MR MR MENGDEY, AGP for Respondent(s) : 1 - 2.
MR SHIRISH JOSHI for Respondent(s) : 3 - 15.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 02/03/2007

ORAL JUDGMENT

1. At the outset, learned advocate Shri Baiju Joshi appearing for respondent no.3-society from the further affidavit dated 2nd March, 2007 pointed out that the petitioner nos. 1,5,7 and 16 have sold their premises to other persons and the purchasers have deposited Rs.50,000/- with

simple interest at the rate of 12% from 31st March, 2001 till payment. He further points out that the petitioner nos. 20,22 and 26 have made payment of Rs.50,000/- each with similar interest and petitioner no.23 has expired.

2. In view of this, the petition has become infructuous qua petitioner nos. 1,5,7,16,20,22 and 26. With respect to petitioner no.23, learned advocate Shri Chetan Pandya has no instructions from the heirs. However, the ultimate conclusions that this Court may reach qua other petitioners and the directions that may be given would be available to the heirs of the deceased petitioner also and in that view of the matter, it is not necessary to wait for bringing them on record.

3. Short question that calls for consideration is the right of the petitioners to become the members of respondent no.3-society.

4. There is a long history to the present litigation. However, in view of the stand adopted by respondent no.3 before me, it is not necessary to go the same into at any great length. Suffice to say, the petitioners occupied cabins in Sindhi Market at Kalupur, Ahmedabad which market has been constructed by the Municipal Corporation. It is a common ground that there are large number of occupants in the

said market who were earlier cabin holders who are sought to be alloted such shops by the Corporation in lieu of their removal from the cabins. Respondent no.3 society has been formed to take care of interest of such persons. Since the petitioners were not admitted to the membership of respondent no.3-society, they initiated proceedings against the society under the Gujarat Cooperative Societies Act. In fact, the District Registrar by order dated 8th February, 2001 upheld the stand of the petitioners and directed that they be entered in the membership of respondent no.3-society. Society preferred a revision application before the Additional Registrar(Appeals) who by impugned order dated 18th April, 2001 set aside the order passed by the District Registrar and allowed the revision application of the society.

5. It is the case of the petitioners canvased through their learned advocate Shri Chetan Pandya that respondent nos. 3 to 15 are illegally blocking the entry of the petitioners into the society and the District Registrar had rightly directed that the petitioners be made members of respondent no.3-society. He submitted that the petitioners would lose their valuable rights if they are not entered into the membership of the society.

6. On the other hand, learned advocate Shri Baiju

Joshi appearing for respondent no.3 society submitted that the society has no objection in admitting the petitioners into its membership provided the petitioners agree to abide by rules, regulations and by-laws of the society and in particular depositing a sum of Rs. 50,000/- with reasonable interest from 31st March, 2001 till payment. In particular, he pointed out that currently there are as many as 370 members of the society. Each member has made similar contributions and in cases of delay, has also paid the amount of interest. He submitted that initially, the society demanded interest at the rate of 25% per annum, however, subsequently has collected simple interest on the principal amount at the rate of 12% per annum. Considering the background narrated here-in-above, the entire controversy is narrowed down substantially. The society is at-least now prepared to enter the petitioners qua whom the petition is surviving into membership of the society as long as they agree to deposit a sum of Rs. 50,000/- with reasonable interest from 31st March, 2001 till payment.

7. Learned advocate Shri Pandya for the petitioners however, submitted that the society has no authority to collect such deposit and there was no valid resolution passed by the society for such collection.

8. I am afraid the petitioners cannot insist for membership of the society without contribution of the aforesaid sum. Firstly, it is not disputed by the petitioners that all other members almost 370 in number have made such contribution. Secondly, the society has to make payment to the Corporation for allotment of the premises to its members. The society shall also require funds for maintenance of the property and other related activities. In that view of the matter, when all other existing members have without any prejudice made certain contributions towards the funds of the society, I do not see how the petitioners who are few in number can hope to become the members of the society without such contribution. Accepting the request of the petitioners to admit them in the membership of the society without contribution would lead to inequitable situation. These petitioners would receive all the benefits that a member of the society would receive without making contribution for the same which other 370 co-members have already made. In that view of the matter, even without deciding the question of such contribution being collected through a resolution passed by the society or otherwise, when such overwhelming members have already paid their contribution, I see no possibility whatsoever of the petitioners becoming the members of the society without having to suffer such contribution. In that view of the matter,

though the petitioners would have every right as already accepted by respondent no.3 to become a member of the society, such right cannot be exercised without making contribution which other 370 odd members have made.

9. Under this circumstances, by allowing this petition, it is directed that respondent no.3 society shall enter the petitioners into its membership provided that they pay a sum of Rs. 50,000/- each with simple interest at the rate of 10% per annum from 31st March, 2001 till actual payment.

10. I am conscious that society has collected interest at the rate of 12% per annum from other members. In facts of this case, when these petitioners have agitated their legal rights through Court proceedings, at this point of time, considering the prevalent interest rates, this modification is made in their cases which need not necessarily ipso facto apply in other cases which may arise in future.

11. With these directions, the petition is allowed in part. Rule is made absolute to the above extent. No costs.

Direct service to respondent no.3 is permitted

(Akil Kureshi,J.)

(raghu)